

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

YUGEN KAISHA, Y.K.F.,	)	No. C-08-0225 SC
	)	
Plaintiff,	)	
	)	ORDER DENYING
v.	)	DEFENDANT'S MOTION
	)	FOR ABSTENTION OR
	)	STAY AND GRANTING
STEPHANIE DODSON,	)	TRIANO'S MOTION TO
	)	<u>INTERVENE</u>
Defendant.	)	
	)	
	)	

**I. INTRODUCTION**

Plaintiff Yugen Kaisha, Y.K.F. ("Plaintiff" or "YKF") filed this action to set aside an allegedly fraudulent conveyance under 11 U.S.C. §§ 544(b) and 548. Defendant Stephanie Dodson ("Defendant" or "Dodson") moves the Court to abstain from hearing this action pursuant to 28 U.S.C. § 1334(c)(1), or in the alternative to stay the matter. See Docket No. 12 ("Abst. Mot."). Should the Court allow the matter to proceed, Dodson also requests that YKF be required to post a \$25,000 security for costs. See id. YKF filed an Opposition and Dodson filed a Reply. Docket Nos. 15 ("Abst. Opp'n"), 18 ("Abst. Reply").

Also before the Court is a motion by Martin Triano, doing business as the Law Office of Martin F. Triano ("Triano"), to intervene in this dispute. See Docket No. 10 ("Int. Mot."). YKF filed an Opposition to Triano's motion and Triano replied. Docket

Nos. 14 ("Int. Opp'n"), 17 ("Int. Reply"). Dodson did not participate in the briefing on Triano's motion.

Having thoroughly considered all of the parties' submissions, the Court hereby DENIES Dodson's motion and GRANTS Triano's motion.

## II. BACKGROUND

### A. YKF's Claim

On September 5, 2005, Alexander Popov ("Popov" or "Debtor") filed a petition for relief under Chapter 7 of the Bankruptcy Code in the Bankruptcy Court for the Northern District of California. See In re: Popov, No. 05-32929 (Bankr. N.D. Cal. 2005).

In August of 2004, Popov transferred to Dodson 3,774,000 shares of common stock in Smart Alec's Intelligent Food, Inc, for a price of \$12,500.<sup>1</sup> YKF alleges that, at the time of this sale, the shares had been pledged to YKF as security for indebtedness of hundreds of thousands of dollars. Compl., Adv. Docket No. 1, Ex. 3; Monroe Decl., Docket No. 16, ¶ 5, Ex. 2.<sup>2</sup> YKF purchased from the Chapter 7 Trustee the rights, claims, causes of action, and remedies of the Trustee and of the Debtor's Estate to avoid and recover the transfer of stock from Debtor to Dodson under 11

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<sup>1</sup>YKF alleges that Debtor actually transferred the shares to Defendant in August of 2005 and that Debtor and Defendant backdated the share purchase agreement to further their fraudulent conveyance. Resolution of this issue is not necessary for the instant motion.

<sup>2</sup>Citations to documents from the underlying adversary proceeding, No. 07-3104 (Bankr. N.D. Cal), will appear in the form "Adv. Docket No. XX."

1 U.S.C. §§ 544(b), 548, and 550, and California Civil Code §§ 3439-  
2 3439.12. Compl. ¶¶ 10-11, Ex. A. The sale of the Trustee's right  
3 to pursue this action was approved by the Bankruptcy Court.  
4 Monroe Decl. ¶ 5, Ex. 2.

5 After purchasing the right to do so, YKF brought this action  
6 against Dodson, alleging that Debtor transferred the stock to  
7 Dodson with the intent to hinder, delay, or defraud the Debtor's  
8 creditors. See Yugen Kaisha, Y.K.F. v. Dodson, Adversary  
9 Proceeding No. 07-3104 (Bankr. N.D. Cal.). By transferring the  
10 stock to Dodson, YKF alleges, Debtor took the stock out of the  
11 bankruptcy estate so that he and Dodson could retain control of  
12 Smart Alec's.

13 Dodson filed a counterclaim against YKF, alleging breach of  
14 contract, on which she demanded a jury trial. Adv. Docket No. 6.  
15 Dodson did not consent to have the jury trial before the  
16 Bankruptcy Court. Pursuant to Bankruptcy Local Rule 9015-2(b),  
17 the Bankruptcy Court therefore certified that the reference should  
18 be withdrawn and the case should be transferred to this Court.  
19 Adv. Docket No. 24.

20 **B. Triano's Claim**

21 Triano moves to intervene in this action on the basis that he  
22 has a secured interest against the same 3,774,000 shares of stock  
23 in Smart Alec's that form the basis of YKF's claim against Dodson.  
24 In April 2002, prior to transferring the stock to Dodson, Debtor  
25 executed a promissory note in the amount of \$45,648 plus "such  
26 additional sums which may accrue from the legal services being  
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1 provided by" Triano. See Byrne Decl., Docket No. 10-4, Ex. N.<sup>3</sup>  
2 This note also provides for collection of attorney's fees and  
3 costs incurred in enforcement of its terms. See id. Debtor also  
4 pledged his shares of Smart Alec's as collateral to secure payment  
5 of the promissory note. Id. Under the terms of the promissory  
6 note, the entire balance, including principal, costs, and interest  
7 was due on April 30, 2003. Id. Triano claims he perfected his  
8 interest in the stock by filing a statement with the California  
9 Secretary of State in 2002, which he amended in April 2007 to  
10 reflect the continued interest after Debtor's discharge from  
11 bankruptcy. Id. Ex. O.

12 Triano sued Dodson in California state court, alleging that  
13 Defendant purchased and encumbered the stock in question without  
14 notice to Triano, in violation of the promissory note. Id. Ex. Q.  
15 Triano sought a judicial determination that the promissory note  
16 gives him a valid and enforceable security interest in the stock,  
17 and damages for intentional interference with contractual  
18 relations. Id.

19 In the bankruptcy proceeding, Triano timely presented his  
20 Proof of Claim secured by the stock disputed in this matter, which  
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22 <sup>3</sup>The Declaration of Mark D. Byrne, counsel for Triano,  
23 purports to include 18 exhibits, labeled A-R. However, the  
24 document identified in the text of Byrne's declaration as Exhibit  
25 B, a copy of the Bankruptcy Court's certification to withdraw the  
26 reference, was not actually attached to the declaration. The  
27 result of this is that in the version of the declaration filed with  
28 the Court, the Exhibits labeled B-P correspond with those  
identified in Byrne's declaration as C-R. As the Court has access  
to the certification, Adv. Docket No. 24, the Court will refer to  
the remaining exhibits as though they had been correctly labeled to  
correspond with the text of Byrne's declaration.

1 was not objected to by any of the estate's creditors. See id. Ex.  
2 F. The Trustee objected in part, however. The bankruptcy court  
3 upheld the Proof of Claim over the Trustee's objection, and the  
4 district court affirmed that ruling on appeal. See id. Exs. G, H.

5 Triano asserts that when YKF purchased the right to bring  
6 this suit from the Trustee, it did so subject to Triano's interest  
7 as a secured creditor, and that both YKF and the Trustee  
8 acknowledged that interest. See id. Exs. J-M. In the new  
9 complaint Triano wishes to file here, if the Court allows him to  
10 intervene, Triano seeks declaratory relief from the Court  
11 affirming that he holds a valid Proof of Claim in the Debtor's  
12 estate, that he holds a valid security interest in the disputed  
13 shares of Smart Alec's and the proceeds therefrom, and attorney's  
14 fees and costs recoverable under the terms of his promissory note  
15 from Debtor. See id. Ex. R.

16  
17 **III. ABSTENTION MOTION**

18 **A. Legal Standard**

19 Dodson moves the Court to abstain from hearing this matter.  
20 The Bankruptcy Code vests the Court with the discretion to abstain  
21 under certain circumstances:

22 Except with respect to a case under chapter 15  
23 of title 11, nothing in this section prevents  
24 a district court in the interest of justice,  
25 or in the interest of comity with State courts  
26 or respect for State law, from abstaining from  
hearing a particular proceeding arising under  
title 11 or arising in or related to a case  
under title 11.

27 28 U.S.C. § 1134(c)(1). The Ninth Circuit has identified a number

of factors that the Court may consider in deciding whether or not to abstain:

(1) the effect or lack thereof on the efficient administration of the estate if a Court recommends abstention, (2) the extent to which state law issues predominate over bankruptcy issues, (3) the difficulty or unsettled nature of the applicable law, (4) the presence of a related proceeding commenced in state court or other nonbankruptcy court, (5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334, (6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case, (7) the substance rather than form of an asserted "core" proceeding, (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court, (9) the burden of [the bankruptcy court's] docket, (10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties, (11) the existence of a right to a jury trial, and (12) the presence in the proceeding of nondebtor parties.

Christensen v. Tuscon Estates, Inc. (In re Tuscon Estates, Inc.), 912 F.2d 1162, 1167 (9th Cir. 1990) (quoting Republic Reader's Serv., Inc. v. Magazine Serv. Bureau, Inc. (In re Republic Reader's Serv., Inc.), 81 B.R. 422, 429 (Bankr. S.D. Tex. 1986))(modification in original).

## **B. Discussion**

### **1. Abstention Is Inappropriate**

None of Defendant's arguments in favor of abstention is compelling. First, Defendant argues that neither of the parties here was a debtor or trustee in the underlying bankruptcy. Abst. Mot. at 5. This is misleading. YKF lawfully purchased, with the Bankruptcy Court's approval and without objection from any party,

1 the Trustee's rights in this action. YKF therefore stands in the  
2 place of the Trustee in this suit. See Duckor Spradling & Metzger  
3 v. Baum Trust (In re P.R.T.C., Inc.), 177 F.3d 774, 782-83 (9th  
4 Cir. 1999) (chapter 7 trustee may authorize a creditor to exercise  
5 the power to bring avoidance claims); see also Simantob v. Claims  
6 Prosecutor, L.L.C. (In re Lahijani), 325 B.R. 282, 288 (B.A.P. 9th  
7 Cir. 2005); Religious Tech. Ctr. v. Lucas (In re Henson), No.  
8 03-5131, 2006 Bankr. LEXIS 3722, at \*26-27 (Bankr. N.D. Cal. Apr.  
9 21, 2006) (collecting authority). Defendant concedes this point  
10 in her Reply brief, claiming it has no bearing on the abstention  
11 issue, despite the fact that she repeated the argument that  
12 neither she nor YKF is a trustee only one paragraph earlier. See  
13 Abst. Reply at 3; see also Abst. Mot. at 5.

14 Defendant next argues that the Court should abstain because  
15 YKF included both Bankruptcy Code and California Code of Civil  
16 Procedure provisions in the Complaint. Abst. Mot. at 5. While  
17 the Court may be called upon to answer questions of California  
18 law, it is clear that the bankruptcy issues are dominant. The  
19 First and Third Causes of Action arise solely under 11 U.S.C. §  
20 548. Section 548(a)(1)(A) allows the trustee to avoid a transfer  
21 of the debtor's interest in any property or obligation that  
22 occurred up to two years prior to filing the bankruptcy petition,  
23 where it can be shown that the debtor "made such transfer or  
24 incurred such obligation with actual intent to hinder, delay, or  
25 defraud any" creditor. The remedy provided, avoidance of the  
26 transfer, is explicitly created by the federal statute, without  
27 any reference to state law. The same is true with regard to  
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1 section 548(a)(1)(B)(i), which allows the trustee to avoid a  
2 transfer made in the same two year period for which the debtor  
3 "received less than a reasonably equivalent value." These are  
4 solely questions of bankruptcy law. See Lahijani, 325 B.R. at 288  
5 ("While there is some disagreement among courts about the exercise  
6 by others of the trustee's bankruptcy-specific avoiding power  
7 causes of action, the Ninth Circuit permits such actions to be  
8 sold or transferred." (emphasis added)). While YKF's claims  
9 under 11 U.S.C. § 544(b)(1) may require reference to California  
10 law for resolution, the rights asserted are created by federal law  
11 and also require resolution of other bankruptcy issues for their  
12 enforcement.

13 Defendant's final argument for abstention is that YKF is  
14 forum shopping, because it could have brought this action in the  
15 Alameda County Superior Court. See Abst. Mot. at 5-6. Bringing  
16 claims which arise under the Bankruptcy Code in the Bankruptcy  
17 Court, as YKF did, can hardly be considered forum shopping. The  
18 mere existence of an alternative forum is not a basis for  
19 abstention, particularly where the dispute raises questions of  
20 bankruptcy law and falls under this Court's original jurisdiction.  
21 See 11 U.S.C. §§ 544, 548; 28 U.S.C. § 1334.

22 Even if it were not clear that YKF is asserting bankruptcy  
23 claims and invoking this Court's jurisdiction under the bankruptcy  
24 law, the Court would still have jurisdiction. YKF is a Japanese  
25 corporation with its primary place of business in Japan.  
26 Defendant is a California resident. The amount in controversy  
27 exceeds \$75,000. As such, the matter properly falls within the  
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1 Court's diversity jurisdiction. See 28 U.S.C. § 1332(a)(2).

2 Though unnecessary, the existence of a second basis for the  
3 Court's jurisdiction further supports the Court's conclusion.

4 For each of the reasons identified above, the Court concludes  
5 that abstention in this matter is inappropriate. Defendant did  
6 not address the majority of the judicially-recognized reasons for  
7 abstaining, and failed to persuade the Court that the reasons she  
8 did address were actually applicable here. The Court therefore  
9 DENIES Defendant's motion to abstain.

10 2. No Basis Exists For Staying This Action

11 Defendant moves in the alternative for a stay of this action.  
12 According to Defendant, YKF is not qualified to do business in  
13 California, and therefore, it may not maintain an action in the  
14 California courts. See Abst. Mot. at 6; Cal Corp. Code § 2203(c).  
15 This argument is without merit. Because YKF's claim arises under  
16 the federal bankruptcy laws and the Court has jurisdiction under  
17 those laws, as discussed above, the state licensing requirements  
18 cannot prevent YKF from suing in federal court. See Harms, Inc.  
19 v. Tops Music Enters., Inc., 160 F. Supp. 77, 80-81 (S.D. Cal.  
20 1958); see also Lone Star Steakhouse & Saloon v. Alpha of Va.,  
21 Inc., 43 F.3d 922, 929 n.9 (4th Cir. 1995).

22 Even if the sole basis for jurisdiction were diversity,  
23 however, Defendant's argument would still fail. Defendant's claim  
24 that YKF could not sue in California state court significantly  
25 contradicts the assertions in her abstention argument that if the  
26 Court were to abstain, YKF would simply bring suit in California  
27 court. What's more, Defendant acknowledges that YKF previously  
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1 sued her in state court. Abst. Mot. at 5-6. In fact, Defendant's  
2 counterclaim alleges that YKF breached the settlement agreement  
3 arising from the prior suit YKF brought against her in the state  
4 court. See id. at 3-4. Nothing in Defendant's brief or  
5 supporting papers gives the Court any factual basis for concluding  
6 that YKF's eligibility to sue her in state court has changed.

7 Finally, Defendant has not established that YKF is conducting  
8 "intrastate business" as that term is defined in the California  
9 Corporations Code. See Cal. Corp. Code §§ 2105, 2203(c). The  
10 burden of proving that YKF was transacting intrastate business and  
11 that this action arises out of that business is on Defendant. See  
12 United Med. Mgmt. v. Gatto, 49 Cal. App. 4th 1732, 1740 (Ct. App.  
13 1996). Under section 191(a) of the Corporations Code, "'transact  
14 intrastate business' means entering into repeated and successive  
15 transactions of its business in this state, other than interstate  
16 or foreign commerce." There is no evidence that YKF has entered  
17 into repeated and successive transactions in California.  
18 Defendant points to YKF's original investment in Smart Alec's  
19 (which gave rise to YKF's lien against the disputed stock), and  
20 the series of legal disputes following that investment. However,  
21 merely being a shareholder of a domestic corporation does not  
22 qualify as transacting intrastate business. Cal. Corp. Code §  
23 191(b)(1). Nor does bringing a lawsuit or settling a lawsuit or  
24 dispute. Id. § 191(c)(1). As Defendant has not carried her  
25 burden, the Court DENIES the motion to stay.

26 3. Defendant's Request For Security Is Not Justified

27 Defendant also moves the Court to require YKF to furnish a  
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1 \$25,000 security for costs. Abst. Mot. at 8. Federal courts have  
2 the inherent power to require a plaintiff to post such a security,  
3 and often look to the law of the forum state in determining  
4 whether to do so. See Simulnet E. Assocs. v. Ramada Hotel  
5 Operating Co., 37 F.3d 573, 574 (9th Cir. 1994). The California  
6 Civil Procedure Code allows a defendant to move for an undertaking  
7 of costs:

8           The motion shall be made on the grounds that  
9           the plaintiff resides out of the state or is a  
10          foreign corporation and that there is a  
11          reasonable possibility that the moving  
12          defendant will obtain judgment in the action  
13          or special proceeding. The motion shall be  
14          accompanied by an affidavit in support of the  
15          grounds for the motion and by a memorandum of  
16          points and authorities. The affidavit shall  
17          set forth the nature and amount of the costs  
18          and attorney's fees the defendant has incurred  
19          and expects to incur by the conclusion of the  
20          action or special proceeding.

21 Cal. Civ. Proc. Code § 1030(b). While there is no dispute that  
22 YKF is a foreign corporation, Defendant has not satisfied the  
23 other statutory requirements. Defendant does not address the  
24 merits of the case at all, let alone prove that "there is a  
25 reasonable possibility" that she will obtain judgment. Id. The  
26 Court therefore DENIES Defendant's motion for a security for  
27 costs. See A. Farber & Partners, Inc. v. Garber, 417 F. Supp. 2d  
28 1143, 1167-47 (C.D. Cal. 2006).

#### 29 **IV. INTERVENTION MOTION**

##### 30 **A. Legal Standard**

31 Rule 24 of the Federal Rules of Civil Procedure governs both  
32 intervention as a right and permissive intervention. See Fed. R.

1 Civ. P. 24(a), (b). Rule 24 is broadly construed in favor of  
2 applicants for intervention. United States v. Stringfellow, 873  
3 F.2d 821, 826 (9th Cir. 1986), vacated on other grounds sub nom.,  
4 Stringfellow v. Concerned Neighbors In Action, 480 U.S. 370  
5 (1987). Intervention as a right, under Rule 24(a)(2), is governed  
6 by a four-part test:

7 (1) the applicant's motion must be timely; (2)  
8 the applicant must assert an interest relating  
9 to the property or transaction which is the  
10 subject of the action; (3) the applicant must  
11 be so situated that without intervention the  
12 disposition of the action may, as a practical  
13 matter, impair or impede his ability to  
14 protect that interest; and (4) the applicant's  
15 interest must be inadequately represented by  
16 the other parties.

17 Sagebrush Rebellion, Inc. v. Watt, 713 F.2d 535, 527 (9th Cir.  
18 1983). Application of this test is guided by practical concerns.  
19 Stringfellow, 873 F.2d at 826. Where the party seeking to  
20 intervene cannot satisfy the requirements of Rule 24(a), he may  
21 still be entitled to permissive intervention under Rule  
22 24(b)(1)(B) if he can satisfy three conditions: "(1) the movant  
23 must show an independent ground for jurisdiction; (2) the motion  
24 must be timely; and (3) the movant's claim or defense and the main  
25 action must have a question of law and fact in common." Venegas  
26 v. Skaggs, 867 F.2d 527, 529 (9th Cir. 1989).

27 **B. Discussion**

28 Triano asserts that he may intervene as a matter of right  
under Rule 24(a)(2). In the alternative, if the Court finds no  
right, Triano argues that the Court should grant him permission to  
intervene under Rule 24(b)(1)(B). The Court agrees with Triano in

1 the first instance, and does not reach the question of permissive  
2 intervention.

3 Of the four factors Triano must establish to prove he has the  
4 right to intervene, two are not in dispute. First, Triano filed  
5 his motion to intervene in a timely manner. Before the Bankruptcy  
6 Court, Triano filed his motion shortly after Dodson filed her  
7 Answer. See Adv. Docket Nos. 6, 12. Triano then re-filed his  
8 motion promptly in this Court after the reference was withdrawn.  
9 See Int. Mot.; Sierra Club v. U.S. Envtl. Prot. Agency, 995 F.2d  
10 1478, 1481 (9th Cir. 1993) (motion to intervene timely if filed at  
11 the outset of the litigation). The fourth factor is also  
12 undisputed, as it is clear that Triano's interests are adverse to  
13 both Dodson and YKF. However, YKF does contest the second and  
14 third factors.<sup>4</sup> See Int. Opp'n at 3-4.

15 The second factor in the test for intervention is whether the  
16 prospective intervenor "assert[s] an interest relating to the  
17 property or transaction which is the subject of the action."  
18 Sagebrush Rebellion, 713 F.2d at 527. This interest must also be  
19 protectable. See Sierra Club, 995 F.2d at 1484 ("It is generally  
20 enough that the interest is protectable under some law, and that  
21 there is a relationship between the legally protected interest and  
22 the claims at issue."). Triano asserts that Debtor unlawfully  
23 transferred 3,744,000 shares of Smart Alec's stock to Dodson, that  
24 he has a secured lien against those shares, and that his lien

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25  
26 <sup>4</sup>Before the Bankruptcy Court withdrew the reference, Triano  
27 moved to intervene in that proceeding, and Dodson did not oppose  
28 intervention. See Adv. Docket Nos. 12, 16.

1 should be superior to any claim YKF has against the same shares.  
2 Triano's interests stem both from his previously-upheld Proof of  
3 Claim in the underlying Bankruptcy case, as well as his direct  
4 claim of a secured interest in the stock. These interests are  
5 both protectable by law and related to the property or transaction  
6 which is the subject of YKF's action against Dodson. Triano has  
7 therefore satisfied the second Sagebrush Rebellion requirement.

8 YKF also argues that Triano hasn't satisfied the third  
9 requirement. Int. Opp'n at 4. The Court disagrees. Triano's  
10 ability to protect the interests described above may be severely  
11 impaired by outcomes possible in the present action. YKF suggests  
12 that, as long as Triano can bring a claim against whoever owns the  
13 stock at the end of this suit, his ability to protect his interest  
14 is not affected. The issue is not so simple. For example, a  
15 ruling in this action that the transfer of stock to Dodson was not  
16 fraudulent would likely be persuasive to the state court  
17 considering the nearly-identical issue in Triano's action against  
18 Dodson. Even though the ruling here would not be binding on the  
19 state court, the potential effect still warrants intervention  
20 here:

21 Furthermore, even if we assume that the  
22 district court's ruling has no binding effect  
23 on the Arizona courts, we cannot wholly  
24 overlook the fact that jurisprudential  
25 concerns might cause those courts to find the  
26 reasoning of the district court more  
27 persuasive than they might otherwise find a  
28 similar argument to be, and that they might  
29 choose to accept the district court's  
30 reasoning to avoid confusion, lack of  
31 finality, and disrespect for law.

32 Yniquez v. Arizona, 939 F.2d 727, 737 (9th Cir. 1991), vacated on

1 other grounds sub nom., Arizonans for Official English v. Arizona,  
2 520 U.S. 43 (1997); see also Stringfellow, 873 F.2d at 826.

3 As a practical matter, the outcome of this litigation will  
4 determine the "remedial scheme" for the disposition of the  
5 disputed Smart Alec's shares. See Stringfellow, 873 F.2d at 827.  
6 Excluding Triano from that remedial scheme is also sufficient  
7 basis for allowing him to intervene here:

8 Where, as here, a prospective intervenor has  
9 demonstrated a clear interest in the remedial  
10 scheme, and where the prospective intervenor  
11 seeks to obtain remedies that differ from  
12 those sought by the original plaintiffs, it is  
13 reasonable to conclude that disposition of the  
14 litigation may impair the prospective  
15 intervenor's ability to protect its interests.  
16 That the remedy established in the present  
17 litigation may be challenged in a subsequent  
18 action does not detract from our conclusion.

14 Id. Given the liberal scope of Rule 24 favoring intervention, the  
15 Court finds that Triano has established all four of the Sagebrush  
16 Rebellion factors, and therefore GRANTS Triano's motion.

17  
18 **V. CONCLUSION**

19 For the reasons set forth above, the Court DENIES Dodson's  
20 motion in its entirety and GRANTS Triano's motion. Triano shall  
21 be allowed to file his proposed Complaint for Intervention,  
22 attached as Exhibit R to the Byrne Declaration.

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24 IT IS SO ORDERED.

25 Dated: August 11, 2008

26   
27 UNITED STATES DISTRICT JUDGE  
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